IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7184 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISHWARLAL GIRDHARLAL PABARI

Versus

V S SINHA ADDL CHIEF SEC

Appearance:

MR PM THAKKAR for Petitioner

GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 22/09/2000

ORAL JUDGEMENT

The petitioner has moved this Court by filing this petition as Additional Chief Secretary (Revenue), State of Gujarat, by order dated 4.8.1986 quashed the order made by District Development Officer, Jamnagar, whereby permission was granted to convert the land into

non-agricultural land with certain conditions mentioned therein.

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#. Learned advocate for the petitioner contended that in the instant case, Revisional powers are exercised under section 211 of the Bombay Land Revenue Code after three years.

#. From the record it transpires that the petitioner submitted an application for making use of the land for other than agricultural purposes and the District Development Officer, by his order dated 4.8.1986 granted the application whereby the land admeasuring 6 Ares 2 Gunthas of Survey No. 6 situated within the village limits of Suraj Kharadi was permitted for the use for purpose other than agricultural. In the application it was pointed out that in view of the permission granted, the plot of land was divided in sub-plots and the property was transferred to others by subplotting. Attention of the Revenue Authority was drawn to the judgments delivered by the Apex Court that the powers can be exercised within a reasonable period. It appears that on the ground that through the petitioner stated that there was subplotting, no material was placed on record. Affidavit is also filed before this Court that the subplots were developed and residential premises have been constructed and are being used by the occupants since years together. The said affidavit is ordered to be taken on record.

#. Learned advocate appearing for the petitioner submitted that the power could have been exercised within a reasonable period but in the instant case, after gross delay, the powers were exercised and the order has been made. In the meanwhile, the property has been developed.

#. The applicant was called upon by issuing a notice on the ground that the land cannot be used for the purpose of residence as a factory is situated nearby the place, which is likely to cause pollution. It was pointed out in the reply that the said ground is not tenable as the Company has constructed residential houses in its own land nearby the place, where people are residing. It was also pointed out that for Survey No. 72, order has been made in this behalf. The petitioner has relied on the averments in paragraph 3 of his reply wherein it is stated that there are number of properties wherein people are residing, and the ground on which the applicant was called upon to review the order is not tenable.

#. On behalf of the State, no reply is filed to controvert the averments made in the petition.

#. The Apex Court, in the case of STATE OF GUJARAT vs. PATEL RAGHAV NATHA AND OTHERS reported in AIR 1969 SC 1297 has pointed out that the powers should be exercised within a reasonable time. The Court pointed out that reading section 11 and 265 of the Bombay Land Revenue Code together, it is clear that the Commissioner must exercise his revisional powers within few months of the order of the Collector. The Apex Court further pointed out that the action must be taken within reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations atleast within a few months from the date of the permission.

#. State has not placed any material to indicate that in the surrounding places, there are no other residential premises. As a matter of fact, it was the duty of the revisional authority, when specific averments were made before it in the Written Submissions, to verify the facts by calling the records and deliver a decision thereafter. Here, the authority has failed to do so, and without any record before it, has passed the order.

#. Under the circumstances, the petition is required to be allowed. Rule is made absolute, with no order as to cost.

csm./ (B.C. PATEL, J.)